

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0450, State of New Hampshire v. Michael Davis, the court on March 12, 2007, issued the following order:

Following a jury trial, the defendant, Michael Davis, was convicted on two counts of indecent exposure, three counts of endangering the welfare of a child and one count of violation of a protective order. On appeal, he argues that the court erred in denying his motion to dismiss one of the indecent exposure charges. We affirm.

The defendant argues that two of the indecent exposure charges comprise the same offense for double jeopardy purposes. A defendant is placed in double jeopardy only if he is charged with both offenses deriving from the same criminal act. State v. Ford, 144 N.H. 57, 66 (1999). A criminal act consists of the sum of discrete actions that together constitute an offense. *Id.* When cumulative punishments are sought for offenses arising out of a single transaction, the focus of the inquiry is whether “proof of the elements of the crimes as charged will in actuality require a difference in evidence.” State v. Gooden, 133 N.H. 674, 679 (1990).

Because in this case, each indictment alleged a different offense arising from a different transaction, the defendant’s double jeopardy argument fails.

Affirmed.

DALIANIS, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**